



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 24, 2004

Mr. Miguel A. Saldaña
Law Office of Miguel A. Saldaña
3 North Park Plaza
Brownsville, Texas 78521

OR2004-1341

Dear Mr. Saldaña:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198593.

The Brownsville Independent School District (the "school district") received a request for a "list of all contributors (employees) to the T.S.A. 403b programs by name, amount, and carrier company and campus location." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses the doctrines of common law and constitutional privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Information regarding a financial transaction between an individual and a governmental body is a matter of legitimate public interest; thus, the doctrine of common law privacy does not generally protect information regarding such a transaction. See Open Records Decision No. 600 at 9 (1992). In contrast, information about a public employee's private financial decisions, such as the decision to participate in a voluntary investment program or a deferred

compensation plan that the employer offers but does not fund, is intimate and of no legitimate public interest. *See* Open Records Decision No. 545 at 3-5 (1990).

In this case, you inform us that the 403(b) plans offered by the school district are totally funded by the employees with no public funds contributed by the school district. You state that the school district permits its employees to choose between cash compensation or directing pretax personal income to privately funded investment vehicles. You also state that an employee may decline to participate in the school district's 403(b) plan. We find that the information is intimate and of no legitimate public interest. Accordingly, the school district must withhold the information from the requestor based on section 552.101 in conjunction with the common law right to privacy. *See id.*

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kay Hastings", written over a horizontal line.

Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 198593

Enc: Submitted documents

c: Ms. Graciana de Peña
2625 Village Drive
Brownsville, Texas 78521
(w/o enclosures)